UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/WG.13/1
10 November 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
Sixth session
Geneva, 10-21 January 2000

Provisional agenda

1. Election of officers.

2. Adoption of the agenda.

3. Continuation of the work on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, in accordance with resolution 1999/80 of the Commission on Human Rights.

GE.99-15974 (E)

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/WG.13/2
17 November 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the
Child on the involvement of children
in armed conflicts
Sixth session
Geneva, 10 - 21 January 2000

Comments on the report of the working group

Report of the Secretary-General

1. In paragraph 17 of its resolution 1999/80 of 28 April 1999, entitled "Rights of the child", the Commision on Human Rights requested the Secretary-General to transmit the report of the working group on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts on its fifth session (E/CN.4/1999/73) to Governments, relevant United Nations bodies and specialized agencies, the Committee on the Rights of the Child, the Special Representative of the Secretary-General on the question of the impact of armed conflict on children, and intergovernmental and non-governmental organizations, and to invite their comments in time for circulation prior to the next session of the working group.

2. Pursuant to that resolution, the Secretary-General, on 20 September 1999, addressed requests to Governments, United Nations bodies, specialized agencies, the Committee on the Rights of the Child and intergovernmental and non-governmental organizations concerned, for comments on the report of the working group on its fifth session.

3. By 12 November 1999, a reply had been received from the Friends World Committee for Consultation (Quakers). The present report contains a summary of the comments received. Any additional replies will be reproduced in an addendum to the present document.

Friends World Committee for Consultation (Quakers)

[Original: English]
[6 November 1999]

In response to resolution 1999/80 of the Commission on Human Rights, Friends World Committee for Consultation (Quakers), an international non-governmental organization in special consultative status with the Economic and Social Council, would like to submit the following comments on behalf of the Coalition to Stop the Use of Child Soldiers[1] and the NGO Sub-Group on Refugee Children and Children in Armed Conflict[2] with regard to the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict.

The experience[3] over the five years since the working group to draft this optional protocol was established by the Commission on Human Rights has led to a much greater knowledge and understanding of the causes and effects (both direct and indirect) of the involvement of children in armed forces and armed groups and their participation in combat.

Child soldiers are victims of a broad range of human rights violations: not only are they exposed to the likelihood of death and injury in combat, but also at other times, for example if they try to avoid recruitment, to escape, disobey orders, or are unable to keep up. Furthermore, they are exposed[4] to torture and ill-treatment, sexual exploitation, health hazards, drug and alcohol abuse, separation from family, deprivation of education and, if captured, to summary execution, prolonged detention, torture, charges for war crimes or treason. These are only a few examples, and the particular effects - physical and psychological - in relation to those who are still progressing through the physical, mental, emotional and moral developmental stages to adulthood have to be borne in mind.[5] In addition, the impact on these children of themselves being the perpetrators needs to be considered since they themselves also kill, injure, torture, rape and commit violent acts against others (including other children) and come to understand the power given by possession of a weapon. The difficulty of demobilizing and reintegrating such children into peacetime society and values is one of the greatest challenges currently facing a number of post-conflict societies or those seeking to move from conflict to peace.

The only way to ensure non-participation of children in hostilities is not to recruit them. International humanitarian law makes a fundamental distinction between civilians and combatants. Members of the armed forces are entitled to be combatants. That means that during an armed conflict they are permitted to kill and to be killed since they are also lawful objects of attack. States who recruit under-18s while claiming that they would not participate in hostilities are, therefore, either gambling on not becoming involved in an armed conflict or are proposing a separate category of members of the armed forces who are not entitled to be combatants. This is not only unsound in law but given the existing difficulties in reality of maintaining the distinction between civilians and combatants is completely impractical and may add to the dangers for civilians.

The conclusion is that we wish to reiterate in the strongest terms that all those defined by international law as children have no place in armed forces or armed groups nor as participants in hostilities. Article 38 of the Convention on the Rights of the Child is the only specific

lowering of the general age of adulthood set at 18 years by article 1 of the Convention [6] The question is not how much difference does it really make between 16, 17 and 18 years the fundamental point is the distinction between children and adults It is essential to ensure that any standard established by the United Nations makes a clear distinction between adults and children in this respect To do otherwise, is to compound the original failure of the Convention on the Rights of the Child and as such is completely unacceptable in law and principle At the same time, the practical implication will be that on the ground it will undermine the developing consensus (in regional and national law and unilateral commitments) and will continue to place children in jeopardy because of doubts over precise age, functions served, likelihood of participation in combat and so forth

In this context, we would like to draw attention to the results of the International Committee of the Red Cross (ICRC) worldwide consultation on the rules of war, "People on War" In response to the question "At what age is a young person mature enough to be a combatant", 88 per cent stated 18 years or above, of whom 35 per cent stated "over 21 years" [7]

We consider the draft optional protocol which NGOs submitted to the United Nations in response to Commission on Human Rights resolution 1998/76,[8] to constitute a clear, workable and achievable standard, given that this would in any case be an optional protocol and as such only binding on those States which choose to become parties to it The current recruitment and deployment laws and practices of the small number of States unwilliing to accept 18 as the minimum age for all forms of recruitment and participation in hostilities should not be permitted to become an obstacle to the protection of the world's children As the United Nations High Commissioner for Human Rights stated to this working group in 1998, "national legislation should not be presented as an obstacle to the elaboration of more advanced international standards" [9] Over the past five years, many States have indeed changed their recruitment and deployment laws and practices in order to align them with the emerging international consensus on non-recruitment and non-participation of under-18s We welcome these changes in themselves and as further evidence of increased understanding and the trend towards better protection of children in this area We also welcome the developing political support, most recently from the OAU Summit,[10] from the Declaration by the Nordic Foreign Ministers,[11] and by the United Nations Secretary-General in his report to the Security Council on protection of civilians in armed conflict, where he not only drew attention to his policy in relation to the minimum age of United Nations peacekeepers but also recommended that the Security Council "Urge Member States to support the proposal to raise the minimum age for recruitment and participation in hostilities to 18" [12]

Notes

[1] The Steering Committee of the Coalition comprises Amnesty International, Defence for Children International, Human Rights Watch, Jesuit Refugee Service, International Federation Terre des Hommes, Quaker UN Office (Geneva), Rädda Barnen (on behalf of the International Save the Children Alliance), World Vision International and regional representatives from Africa (ANPPCAN, African Union for Child Welfare, DCI-Africa) and Latin America (CONAVIGUA-Guatemala, DNI-Uruguay, Colombian Coalition).

[2] This is one of the thematic sub-groups of the NGO Group for the Convention on the Rights of the Child.

[3] This experience includes the whole process of (including research for) the study on the impact of armed conflict on children (the Machel study), the development and pilot testing in regional workshops of the UNHCR/Save the Children Alliance, Action for the Rights of Children (ARC) training modules, the Cape Town Workshop on Prevention of Recruitment, Demobilization and Social Reintegration of Child Soldiers in Africa, the various field programmes with child soldiers, displaced and refugee children and war-affected children, the research undertaken by individual NGOs and by the Coalition to Stop the Use of Child Soldiers and most recently the experience gathered by the regional conferences organized by the Coalition to Stop the Use of Child Soldiers in collaboration with other organizations and host Governments.

[4] Violating many articles of the Convention on the Rights of the Child, including article 19 requiring States parties to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

[5] It is worth noting in this context that the Lusophone participants in the African Regional Conference to Stop the Use of Child Soldiers (Maputo, Mozambique, April 1999) were adamant that while 18 might be acceptable as the minimum age for recruitment it was too young for participation in combat, for which the minimum age should be 21 years, and that the First Mini-Summit of African Children stated "the minimum age for joining the army has to be put at 21 years. This act should be voluntary" (Yaoundé, July 1996).

[6] ILO Convention No. 182 on the Worst Forms of Child Labour unequivocally states that a child is all persons up to the age of 18 years, explicitly prohibits forced or compulsory recruitment of children for use in armed conflict and enables States to go further by providing for the prohibition of other work likely to harm the health, safety or morals of children.

[7] ICRC presentation to the 27th International Conference of the Red Cross and the Red Crescent, Geneva, 1 November 1999.

[8] Contained in document E/CN.4/1999/WG.13/2 of 23 October 1998 - available in English, French and Spanish.

[9] E/CN.4/1998/102, para. 38, of 23 March 1998.

[10] CM/Dec.482(LXX), decision on the African Conference on the Use of Children as Soldiers, endorsed by the OAU Assembly of Heads of State and Governments without amendment, July 1999, Algiers.

[11] Declaration by the Nordic Foreign Ministers against the use of child soldiers, Egilsstadir, Iceland, 29 August 1999.

[12] S/1999/957 of 8 September 1999, para. 42.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/WG.13/2/Add.1
8 December 1999

Original: ENGLISH/RUSSIAN/
SPANISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
Sixth session
Geneva, 10-21 January 2000

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

Addendum

The present document contains comments submitted by the Governments of Belarus, Ecuador, Turkey and the United States of America.

Belarus

[Original: Russian]
[15 November 1999]

1. The Republic of Belarus is party to most of the international agreements governing relations during armed conflicts. For example, it is a party to the four Geneva Conventions and their two Protocols Additional relating to the Protection of Victims of International Armed Conflicts and the Protection of Victims of Non-International Armed Conflicts, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocol, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1969 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, as well as the multilateral instruments adopted in the framework of the Hague Peace Conferences of 1899 and 1907.

2. The Republic of Belarus has no special legislation on the status of children in armed conflicts, their special status is taken into account in the performance of military service as well as in determining punishment for the commission of crimes in peacetime. Under its Act on the Rights of the Child, the participation of children in military activities and in armed conflicts, the dissemination of propaganda in favour of war and violence among children, as well as the creation of military formations are all prohibited.

3. Under the Act of the Republic of Belarus on Conscription and Military Service, citizens of the Republic between the ages of 18 and 27 are called up for military service in peacetime. When mobilization is declared and persons are conscripted in wartime those from 18 years of age to the upper age limit for reservists laid down in this Act can also be called up for military service. During wartime, the President of the Republic of Belarus can lower the call-up age and raise the upper age limit for calling up reservists.

Ecuador

[Original: Spanish]
[15 November 1999]

4. Ecuador is in favour of fixing the recruitment age, as well as the participation age, at 18. This age limit would apply to both international and domestic conflicts, as well as to governmental and non-governmental activities. Ecuador is therefore in favour of the first option.

5. As regards the procedure for the adoption of the optional protocol, Ecuador tends to favour alternative B: implicit consensus. In any event, it considers that States wishing to do so should be able to submit comments on their position in respect of the optional protocol to be subsequently noted in an official manner. Ecuador, for example, would state that persons of under 18 studying at military or police schools are not covered by the general provision since they are neither recruits nor participants in armed conflicts but students whose courses include training in military theory.

6. As regards what should be done with the working group if agreement is not reached, Ecuador considers that negotiations should be suspended for 2-3 years, in other words, it would opt for alternative A. In no case, however, should the working group be dissolved.

Turkey

[Original: English]
[12 October 1999]

7. A successful and timely conclusion of the draft optional protocol on the involvement of children in armed conflicts is the sincere wish of the Turkish Government. Appreciating the dedicated work of the Chairperson of the working group, Mrs. Catherine von Heidenstam, the Government of Turkey would like to assure her of its continued cooperation and support.

8. One particular concern to the authorities of Turkey has been the concept of "voluntary recruitment" for children under 18 years. Although the minimum age for obligatory recruitment in Turkey has been set as 20 years, voluntary recruitment, which also encompasses children attending military schools and colleges where they are not subjected to armed conflicts, should clearly be identified, and exempted from the scope of the draft protocol. Thus, the Government believes that the reference to military schools in the draft as envisaged in annex II to document E/CN.4/1998/102 ("Chairman's perception", article 2, paragraph 3) should be maintained.

United States of America

[Original: English]
[3 December 1999]

9. The United States Government regrets that the fifth session of the working group on an optional protocol to the Convention on the Rights of the Child which met in Geneva in January 1999 failed to reach consensus on any of the key issues under discussion. The United States condemns the use of children in armed conflict contrary to international standards, and actively supports international efforts to end the practice.

10. The United States has prepared an alternative text (reproduced below) of an optional protocol in the hope of ending the impasse in the working group's negotiations. The United States proposal addresses the real problems confronting child soldiers, i.e., their recruitment and use by non-State actors, the need for international cooperation in their rehabilitation and reintegration, and the establishment of an effective mechanism for international scrutiny of the implementation by States of their obligations with respect to children in armed conflict. The United States proposal would also commit States Parties to raise the minimum age for recruitment into their national armed forces and for participation of such forces in armed conflict from 15 years, which is the minimum age now provided in the Convention on the Rights of the Child and in Protocol I additional to the Geneva Conventions of 1949.

11 The United States hopes other Governments may find the United States proposal worthy of support at the next session of the working group in January 2000 in Geneva

Widely ratifiable

12 One critical aspect of a new human rights protocol in this area is that it be widely ratifiable Since nearly one half of the States Members of the United Nations allow persons under 18 in their national armed forces, it is clear that there is no international consensus to raise the minimum age for recruitment and participation in national armed forces to 18

13 The United States proposal attempts to deal with this fact in a creative and constructive manner that seeks to improve protections for children in armed conflict The proposal requires States Parties to agree to establish under their national laws a minimum age for recruitment into their national armed forces and for participation in such forces in armed conflict that is higher than age 15, the current international standard, and States Parties would agree not to recruit compulsorily into their national armed forces those under the age of 18 With respect to voluntary recruitment, a State Party would agree to deposit a binding declaration which would set forth the minimum age that it would apply with respect to (a) voluntary recruitment of persons into its national armed forces and (b) the participation of such persons in armed conflict

14 This proposal recognizes that the problems confronting children in armed conflict do not lie in the recruitment and participation practices of the vast majority of national armed forces, like those of the United States, which allow those aged 17 to volunteer with parental consent to join their national armed forces and to participate in those armed forces once they have been properly trained

15 It is essential for the United States - and other States, as well - to attract prospective military personnel at the critical juncture when they are about to leave secondary school This is equally important for all countries which utilize all-volunteer forces and must compete with all other employment sectors rather than rely on conscription The voluntary recruitment of 17-year-olds with bona fide parental consent is simply not relevant to the suffering of children affected by armed conflict

Militias and paramilitary groups

16 The true crisis lies in the recruitment - especially the forcible recruitment - of young children, some as young as 9 or 10, for use in armed conflict by non-State actors, and the need to assist children who have been victims of warfare The United States proposal confronts this problem directly It would require that States Parties have or enact legislation to ensure that recruitment below age 18 by dissident armed forces or other organized armed groups is punishable as a criminal offence under their national laws

17 The problem does not involve the recruitment practices of the vast majority of States The heart of the problem involves practices that force young children, often at gunpoint or through kidnapping, to take up arms in support of militias and paramilitary groups engaged in hostilities It is essential that any protocol require that such practices be made criminal and provides a mechanism to scrutinize the enforcement of such laws against offenders

International cooperation

18. The trauma and tragedy of child soldiers and victims in many parts of the world is of great concern to the United States. The impact of war on children has terrible lasting effects that can endure for years and even generations. In recent years, there has been an increasing use of young children as soldiers in armed conflict. This is a practice for which there is no justification. Throughout the world, young children are recruited into military service, often coercively by rebel groups, compelled to fight, then left to pick up the pieces of their often shattered minds and bodies. States can and should assist in bringing an end to this tragedy through international cooperation and assistance.

19. Under the United States proposal States Parties undertake to cooperate to facilitate the elimination of the use of children as soldiers in violation of the protocol and to assist in the rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law.

20. The United States has contributed substantial resources to programmes aimed at reintegrating child soldiers into society and is committed to continue to develop rehabilitation approaches that are effective in addressing a seriously difficult problem. Since 1989, the USAID Displaced Children and Orphan's Fund has spent more than $30 million in supporting activities to assist these children, including demobilization, rehabilitation and integration into civilian society. The protocol should serve as a means for encouraging such programmes and reviewing the support that each State gives to them; they would be important tools for increasing assistance to children who are the victims of armed conflict.

Reporting mechanism

21. The United States proposal contemplates a robust reporting mechanism, which would provide the United Nations (whether the Committee on the Rights of the Child or the High Commissioner for Human Rights - or both) with the means and opportunity to inquire, on the basis of the substantive provisions of the protocol, how a State Party was satisfying its obligations to protect children in armed conflict. This mechanism would provide the United Nations with an organic tool to scrutinize this important area.

Ratification by the United States

22. The United States proposal would permit any State to become a party to the protocol - whether or not that State is a party to the Convention on the Rights of the Child. While the United States is not part of the problem with respect to child soldiers, it is important that it be part of the solution. Recent history demonstrates that there will be few concerted military actions in which the United States does not participate in some way.

23. On 5 November 1999 the United States Senate gave its advice and consent to ratification of ILO Convention No. 182 on the worst forms of child labour. That Convention includes a provision prohibiting the forced or compulsory recruitment of children under the age of 18 for use in armed conflict. The new provision constitutes a significant enhancement of the current international standard of age 15.

Conclusion

24. The United States appeals to other Governments to take all actions available so that the General Assembly can achieve consensus on this important issue and move forward to find new ways to enforce these norms for the most vulnerable children, who desperately need the world's full attention.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The States Parties to the present Protocol,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Condemning with gravest concern **the recruitment, training and use of children in armed conflicts by dissident armed forces or other organized armed groups**,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Convinced of the need to strengthen international cooperation regarding the physical and psychological rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law,

Calling upon all parties to armed conflict to ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to children affected by armed conflict,

Convinced that an Optional Protocol to the Convention on the Rights of the Child that commits States Parties to raise the minimum age for recruitment of persons into their armed forces and the minimum age for their participation in hostilities will implement effectively the principle that the best interests of the child are a primary consideration in all actions concerning children and encourage States Parties to increase protections currently afforded to children under international law,

Noting with satisfaction recent efforts to prohibit the use of children as soldiers in violation of international law, in particular International Labour Organization Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits forced or compulsory recruitment of children for use in armed conflict,

Persuaded of the utility of calling upon States Parties to report to an appropriate body the details of their compliance with the obligations that they have assumed under this Protocol,

Have agreed as follows:

Article 1

1. States Parties shall increase the minimum age, which is set out in article 38 of the Convention on the Rights of the Child as age 15, for the voluntary recruitment of persons into their national armed forces and for the participation of such persons in armed conflict.

2. States Parties shall ensure that those under the age of 18 are not compulsorily recruited into their national armed forces.

Article 2

1. Each State Party shall, at the time of ratification of this Protocol, deposit a binding declaration which shall set forth the minimum age that it will apply with respect to (a) voluntary recruitment of persons into its national armed forces and (b) participation of such persons in armed conflict.

Article 3

1. States Parties that permit persons under the age of 18 to volunteer for service in their national armed forces shall maintain safeguards to ensure that the person has not been forced or coerced into service. Such safeguards may consist of parental consent, the consent of a legal guardian, or other appropriate mechanism capable of verification and oversight.

2. Each State Party that permits persons under the age of 18 to volunteer for service in its national armed forces shall include in its binding declaration a description of the safeguards it has adopted to ensure that such enlistment is not forced or coerced.

Article 4

Each State Party shall review its declaration(s) under article 2 on an annual basis, with a view to the possibility of increasing the minimum age that it applies for the voluntary enlistment of persons into its national armed forces and for the participation of such persons in armed conflict, and shall deposit any declaration(s) accepting higher standards when applicable.

Article 5

States Parties shall prohibit the recruitment in their territory of persons below age 18 by dissident armed forces or other organized armed groups for use in armed conflict. States Parties shall enact such legislation as may be necessary to ensure that such recruitment in their territory is punishable as a criminal offence under their national laws.

Article 6

States Parties undertake to cooperate to facilitate the elimination of the use of children as soldiers in violation of this Protocol and the rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law.

Article 7

Nothing in the present Protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 8

States Parties shall provide annual reports to the Committee on the Rights of the Child concerning their compliance with the provisions of this Protocol, in particular reporting on:

(a) The status of their declarations;

(b) The safeguards that ensure that any persons under the age of 18 who enlist into their national armed forces do so voluntarily;

(c) Any incidents involving the forcible or compulsory recruitment of persons under 18 for use in armed conflict by their national armed forces, dissident armed forces or other organized armed groups;

(d) The steps that they have taken to cooperate in the elimination of the use of child soldiers in violation of this Protocol and to provide for the rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law.

Article 9

The present Protocol shall be subject to ratification or open for accession by any State.

Article 10

The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol. If, however, on the entry of that year the denouncing State Party is engaged in an international or internal armed conflict, the denunciation shall not take effect before the end of such armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 12

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the present Protocol.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/WG.13/2/Add.2
16 December 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended Working Group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
Sixth session
Geneva, 10-21 January 2000

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

Addendum

The present document contains comments submitted by the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention and by the United Nations Children's Fund (UNICEF).

GE.99-16400 (E)

Centre for International Crime Prevention

[Original: English]
[15 November 1999]

The Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention would welcome the minimum age for recruitment of children for direct or indirect involvement in hostilities being set as 18 years of age. The growing tendency is to consider the age of majority to be 18, regardless of whether national legislation stipulates an earlier age for majority.

United Nations Children's Fund (UNICEF)

[Original: English]
[8 November 1999]

Because UNICEF is operational before, during and after armed conflicts in many countries, the agency has seen many of the same children that it has helped nurture, immunize and educate become systematically brutalized in armed conflicts and often recruited or abducted to join armies. Many of the estimated 300,000 children worldwide currently engaged in armed conflict - some of whom are under age 10 - have witnessed or taken part in acts of unspeakable violence, often against their own families or communities.

While the Convention on the Rights of the Child urges Governments to take all feasible measures to ensure that children have no direct part in hostilities, with respect to child soldiers it cites 15 as the minimum recruitment age. In addressing recruitment of adolescent children aged 15 to 18, the Convention specifically states that States parties should "give priority to those who are oldest". Achieving international consensus on this issue proved difficult during the Convention negotiating process and so article 38 falls short of a complete ban on the recruitment of adolescent children.

Recent UNICEF experience in Sierra Leone and elsewhere indicates both the tragic consequences of recruiting child soldiers and the incredible difficulties involved in demobilization. We look forward to a time when there will no longer be thousands of children around the world fighting the wars of adults.

As part of an Anti-war Agenda that works for a culture of peace, reconciliation and reconstruction, and of its Peace and Security Agenda, UNICEF urges the adoption of an optional protocol to the Convention on the Rights of the Child that would forbid the recruitment and participation in armed conflict of all children below age 18. UNICEF firmly believes that protection only becomes meaningful if a clear ban is imposed on the direct and indirect participation of children below 18 in hostilities, regardless of whether they have been forced to join or have voluntarily decided to join armed forces or armed groups.

In establishing 18 as a minimum age for participation in United Nations peacekeeping operations, the United Nations set an important precedent and bolstered the efforts of those pushing for an optional protocol to the Convention. The United Nations further recommended that this policy serve as an example for police and military forces worldwide.

It is UNICEF's hope that the tenth anniversary of the entry into force of the Convention on the Rights of the Child and the beginning of a new century will be used by States around the world as a special opportunity to finalize the drafting and ensure the adoption of the optional protocol and to set a clear international ban on the recruitment of children into armed forces or groups and the participation of children in hostilities. This will certainly be a decisive contribution towards the universal realization of children's rights.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/WG.13/3
6 December 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children
in armed conflicts
Sixth session
Geneva, 10-21 January 2000

Report of the Chairperson of the working group, prepared pursuant to Commission resolution 1999/80

Introduction

1. In paragraph 15 (g) of its resolution 1999/80 of 30 April 1999, entitled "Rights of the Child", the Commission on Human Rights reaffirmed the urgent need to raise the current minimum age limit set by article 38 of the Convention on the Rights of the Child on the recruitment and participation of any person in armed conflicts with the aim of reaching a higher standard of protection of children and of coming to an early conclusion of the work of the working group on a draft optional protocol on the involvement of children in armed conflict, especially in view of the tenth anniversary of the entry into force of the Convention.

2. In paragraph 16 of that resolution the Commission called upon all States (a) and other parties to armed conflict to respect fully international humanitarian law and, in that regard, called upon States parties to respect fully the provisions of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977, while bearing in mind resolution 2 of the twenty-sixth International Conference of the Red Cross and Red Crescent of 1995 entitled "Protection of the civil population in period of armed conflict", and to respect the provisions of

the Convention on the Rights of the Child which accord children affected by armed conflict special protection and treatment, (b) and other parties to armed conflict to end the use of children as soldiers and ensure their demobilization, and to implement effective measures for the rehabilitation and reintegration into society of child soldiers and combatants, child victims in cases of armed conflict or foreign occupation, and invited the international community to assist in that endeavour.

3. In paragraph 17 (a) of the same resolution the Commission decided, with regard to the draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts to invite the Chairperson of the working group to continue broad informal consultations, with the aim of promoting an early agreement on the optional protocol, and, if possible, to produce a report thereon by the end of 1999, including recommendations on how to finalize the formal negotiations.

4. In paragraph 17 (b) and (c) of resolution 1999/80 the Commission requested the working group to meet early in 2000 in order to make further progress with the aim of finalizing its work before the tenth anniversary of the entry into force of the Convention, and on the Rights of the Child, and to report to the Commission at its fifty-sixth session. The Secretary-General was requested to give the necessary support to the working group to meet for a maximum of two weeks and to transmit the report of the working group to relevant recipients and to invite their comments. The Committee on the Rights of the Child, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies were invited to consider being represented and the Special Representative of the Secretary-General on children in armed conflict to consider being present at the next session of the working group.

I. REVIEW OF CONSULTATIONS

5. In pursuance of her recommendations to the working group at its fifth session as endorsed by the Commission on Human Rights, the Chairperson has since conducted broad informal consultations with Governments, United Nations bodies and specialized agencies, international and regional organizations and non-governmental organizations (NGOs). Her ambition has been a transparent and fair multilateral process.

6. The Chairperson has organized open-ended pre-sessional consultative meetings on several occasions in New York and in Geneva and has made herself available for bilateral consultations.

7. Her consultations with all regional groups, as well as with individual Member States, United Nations agencies and NGOs in June 1999 in Geneva dealt with a number of options for the continued work of the working group, which the Chairperson put forward as conclusions of her earlier consultations. The options concerned the age limit and ways to finalize the optional protocol.

8. The alternative options presented were: (a) a minimum age of 18 years both for participation in hostilities and for enforced and voluntary recruitment into armed forces, (b) a minimum age of 18 years for participation in hostilities and of 17 years for voluntary recruitment into armed forces, or (c) a minimum age of 18 years for participation in hostilities only. They also contained proposals that the questions of non-State actors and international-internal conflicts be addressed.

9. With regard to finalizing the optional protocol the options presented were by: (a) full consensus, (b) silent consensus, (c) an opt-in/opt-out clause with regard to voluntary recruitment, or (d) voting. "Reservation" was put within brackets in order to indicate that it was not considered an appropriate option in an optional protocol. The options were presented as representing the Chairperson's bottom line. Finally, the Chairperson asked for comments on possible consequences of a failure to reach an agreement.

10. The chairperson endeavoured to keep in close contact especially with the Committee on the Rights of the Child, the High Commissioner for Human Rights, the Special Representative of the Secretary-General on children in armed conflict, UNICEF and with NGOs.

11. The Chairperson accompanied the High Commissioner for Human Rights on her visit to Sierra Leone and participated in the Organization of African Unity Summit in Algiers. She also accompanied the Special Representative of the Secretary-General on children in armed conflict on his visit to Colombia. These visits offered valuable opportunities to discuss the political, legal and practical problems in affected areas, as well as requirements for concrete action at the international, regional and national levels.

12. The Chairperson accompanied the Minister for Foreign Affairs of Sweden to the European Conference in Berlin on the use of children as soldiers, organized by the NGO International Coalition to stop the Use of Child Soldiers and hosted by the Government of Germany. She participated in numerous events commemorating the tenth anniversary of the Convention on the Rights of the Child, inter alia organized by the Committee on the Rights of the Child in Geneva and during the fifty-fourth session of the General Assembly. On a regular basis she used international regional and bilateral meetings and visits as opportunities for information exchange and consultations regarding the working group, among others the ILO Conference on the Worst Forms of Child Labour, the Human Dimension Review Conferences of the Organization of Security and Co-operation in Europe, held in Vienna and Istanbul, as well as the 27th International Conference of the Red Cross and Red Crescent.

II. RECOMMENDATIONS TO THE WORKING GROUP

13. In her consultations, the Chairperson was yet again able to discern a genuine desire in the international community to strengthen the international standards for the protection of children in armed conflict, in particular by raising the minimum age for recruitment into armed forces and participation in hostilities. However, the need to include solutions to other issues also, such as non-State actors, compliance, military schools and international cooperation, was also stressed. It was proposed that it might be suitable to start off with those issues in order to stress their importance and usefulness for finalizing the optional protocol.

14. The Chairperson noted an increased awareness of the phenomenon of the use of children in armed conflict and a strong commitment to combating it through a number of activities advocating strengthened legal protection, as well as practical action to help children in need. The risk has been highlighted that failure to finalize the optional protocol will continue to stand in the way of necessary action on the ground.

15. The Chairperson recognized a sense of urgency and general support for finalizing the draft optional protocol at the forthcoming session of the working group, and also with regard to the working group fulfilling its assignment before the special session of the General Assembly to be held in 2001 and its review of the implementation of the Convention on the Rights of the Child.

16. In pursuance of the invitation by the Commission on Human Rights to the Chairperson to present recommendations on how to finalize the formal negotiations, and based upon her consultations, the Chairperson wishes to offer the following recommendations to the working group. The comments on her June alternative options have allowed her to narrow down her perception of the majority's positions with regard to the central issues of the optional protocol.

17. The Chairperson has found that the former Chairman's perception paper, contained in annex II to the report of the working group on its fourth session (E/CN.4/1998/102) is generally considered to reflect the views and positions of a majority of the participants at the fourth session of the working group. She therefore wishes to recommend that this document be used as the basis for the negotiations on the final text of the optional protocol at the working group's sixth session.

18. However, taking into account that developments since the text was presented two years ago require some strengthening of the text, the Chairperson proposes that the optional protocol should clearly address:

> The setting of a minimum age of 18 years for participation in hostilities, 18 years for enforced and compulsory recruitment into armed forces and 18 years for voluntary recruitment, with an opt-out provision allowing for a minimum age of 17 years with reference to national legislation;
>
> The issues of non-State parties, compliance, surveillance and military schools (preferably to be dealt with by the working group at the beginning of its session);
>
> The need for international cooperation and commitment in strengthening the international standards for protection of children, and their implementation, in parallel with increased practical activities for the protection, demobilization and reintegration of affected children.

19. It is the Chairperson's perception that a majority supports the optional protocol being finalized at the January 2000 session of the working group and by consensus.